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## **STATE REGULATION OF THE INSURANCE MARKET IN FORCE MAJOR SITUATIONS**

**Abstract.** The problems of functioning in extreme conditions of the system and mechanisms of state regulation of the market of insurance services are covered. The current situation in Ukraine during the onset and spread of coronavirus disease (COVID-19) is analyzed. It is shown that the population remained unprotected, alone with the problems, without decent state compensation for the victims. An assessment of the state of the system and mechanisms of state regulation of the market of insurance of risks of occurrence of extraordinary events is carried out. The author's strategy of construction of insurance of such risks which provides financial support from the state is offered. If the program of insurance of the population against the risks associated with the occurrence and spread of coronavirus disease is created and implemented in the country, the serious prob-

lems we observe in Ukraine could be avoided. It is emphasized that in case of force majeure, natural disasters, coronavirus pandemic, etc. the state through the system and mechanisms of state regulation should immediately introduce measures to stimulate the insurance market to compensate for losses and provide support to the affected population. The negative experience of the public administration in ensuring the well-being of the population of Ukraine during the state of emergency caused by the 'coronavirus crisis' encourages the introduction at the legislative level of a systematic approach to responding to emergencies, epidemiological challenges, natural and other disasters. The need for state support of the insurance business in this area of Ukraine's economy is shown on the example of risk insurance in agriculture due to catastrophic deviations of weather conditions from the norm. Prospects for the development of the risk insurance market in the agricultural sector are considered. Proposals are made to improve the protection of the citizens by insuring against the risks of emergencies. Recommendations have been formulated in the direction of mitigating the negative consequences for individuals and legal entities by expanding insurance mechanisms with the use of state support. The necessity of determining by the regulator of the insurance market the principles of construction of insurance programs in case of emergencies is substantiated. It is recommended to create a program of state support for insurance against the risks of emergencies, which will include measures and financial resources to mitigate the negative consequences in the event of a sudden emergence of new pathogens of infectious diseases and other cataclysms of various kinds. New scientific approaches to revealing the essence of insurance of individuals and legal entities in Ukraine against natural disasters, force majeure events, consequences of emergencies are proposed. A radically new approach to the use of the concept of 'force majeure', which differs from the conventional one, is proposed.

**Keywords:** emergencies, risk insurance, state regulation, regulatory mechanisms.

## **ДЕРЖАВНЕ РЕГУЛЮВАННЯ РИНКУ СТРАХУВАННЯ У ФОРС-МАЖОРНИХ СИТУАЦІЯХ**

**Анотація.** Висвітлено проблеми функціонування в екстремальних умовах системи і механізмів державного регулювання ринку надання страхових послуг. Проаналізовано поточну ситуацію в Україні в період виникнення і поширення коронавірусної хвороби. Показано, що населення залишилося не захищеним, сам на сам із проблемами, без достойної компенсації державою збитків постраждалим. Проведено оцінку стану системи і механізмів державного регулювання ринку страхування ризиків настання подій надзвичайного характеру. Запропоновано авторську стратегію побудови страхування таких ризиків, яка передбачає фінансову підтримку з боку держави. У разі створення і реалізації у державі програми страхування населення від ризиків, пов'язаних з виникненням і поширенням COVID-19, то серйозних проблем, які спостерігаємо в Україні, вдалося б уникнути. Підкреслено, що при виникненні обставин непереборної сили, природних катаклізмів, коронавірусної пан-

демії тощо держава через систему і механізми державного регулювання має невідкладно запровадити заходи стимулювання діяльності страхового ринку для компенсації збитків і надання підтримки постраждалому населенню. Негативний досвід державного управління у сфері забезпечення благополуччя населення України в період надзвичайного стану, зумовленого виникненням “коронавірусної кризи”, спонукає запровадження на законодавчому рівні системного підходу до реагування на надзвичайні ситуації, виклики епідеміологічного характеру, природні та інші катаклізми. На прикладі страхування ризиків у сільському господарстві, зумовленими катастрофічними відхиленнями погодних умов від норми, показана необхідність державної підтримки страхового бізнесу в цій сфері економіки України. Розглянуто перспективи розвитку ринку страхування ризиків в аграрному секторі. Надано пропозиції щодо удосконалення захисту громадян шляхом страхування від ризиків виникнення надзвичайних ситуацій. Сформульовано рекомендації у напрямі послаблення негативних наслідків для фізичних і юридичних осіб за рахунок розширення механізмів страхування із застосуванням державної підтримки. Обґрунтовано необхідність визначення регулятором страхового ринку принципів побудови програм страхування на випадок надзвичайних ситуацій. Рекомендовано створення програми підтримки державою страхування ризиків виникнення надзвичайних ситуацій, яка буде передбачати заходи і фінансові ресурси для пом'якшення негативних наслідків у разі раптової появи нових збудників інфекційних захворювань та інших катаклізмів різного характеру. Запропоновано нові наукові підходи до розкриття сутності страхування фізичних і юридичних осіб в Україні від природних катаклізмів, подій непереборної сили, наслідків надзвичайних ситуацій. Запропоновано кардинально новий підхід до використання поняття “форс-мажор”, який відрізняється від загальноприйнятого.

**Ключові слова:** надзвичайні ситуації, страхування ризиків, державне регулювання, механізми регулювання.

## **ГОСУДАРСТВЕННОЕ РЕГУЛИРОВАНИЕ РЫНКА СТРАХОВАНИЯ В ФОРС-МАЖОРНЫХ СИТУАЦИЯХ**

**Аннотация.** Освещены проблемы функционирования в экстремальных условиях системы и механизмов государственного регулирования рынка страхования. Проанализирована ситуация в Украине в период возникновения и распространения коронавирусной инфекции. Показано, что население осталось не защищенным, один на один с проблемами, без достойной компенсации государством убытков пострадавшим. Проведена оценка состояния системы и механизмов государственного регулирования рынка страхования рисков наступления событий чрезвычайного характера. Предложена авторская стратегия построения системы страхования таких рисков, которая предусматривает финансовую поддержку со стороны государства. В случае создания и реализации государственной программы страхования населения от рисков, связанных с возникновением и распространением

COVID-19, удалось бы избежать серьезных проблем, которые наблюдаем в Украине. Подчеркнуто, что при возникновении обстоятельств непреодолимой силы, природных катаклизмов, коронавирусной пандемии государство через систему и механизмы управления должно безотлагательно принять меры по стимулированию деятельности страхового рынка с целью компенсации убытков и оказания поддержки пострадавшему населению. Опыт Украины в сфере обеспечения благополучия населения в период чрезвычайной ситуации, вызванного “коронавирусным кризисом”, негативный. Рекомендовано введение в государстве системного подхода к реагированию на чрезвычайные ситуации, вызовы эпидемиологического характера, природные и другие катаклизмы. На примере страхования рисков в сельском хозяйстве, обусловленных катастрофическими отклонениями погодных условий от нормы, показана необходимость государственной поддержки страхового бизнеса в этой сфере экономики Украины. Рассмотрены перспективы развития рынка страхования рисков в аграрном секторе. Даны предложения по совершенствованию защиты граждан путем страхования от рисков возникновения чрезвычайных ситуаций. Сформулированы рекомендации в направлении ослабления негативных последствий для физических и юридических лиц за счет расширения механизмов страхования с применением государственной поддержки. Обоснована необходимость определения регулятором страхового рынка принципов построения программ страхования на случай чрезвычайных ситуаций. Программа поддержки государством системы страхования рисков возникновения чрезвычайных ситуаций должна предусматривать меры и финансовые ресурсы для смягчения негативных последствий в случае внезапного появления новых возбудителей инфекционных заболеваний и других катаклизмов различного характера. Предложены новые научные подходы к раскрытию сущности страхования физических и юридических лиц в Украине от природных катаклизмов, событий непреодолимой силы, последствий чрезвычайных ситуаций. Предложен кардинально новый, отличающийся от общепринятого, подход к использованию понятия “форс-мажор”.

**Ключевые слова:** чрезвычайные ситуации, страхование рисков, государственное регулирование, механизмы регулирования.

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**Formulation of the problem.** In the last year the question of the functioning of the system and mechanisms of state regulation of non-banking financial services markets in extreme conditions caused, for example, by coronavirus disease and other cataclysms, has become relevant for the scientists.

This issue is insufficiently studied and covered in the scientific literature. The situation that has arisen in Ukraine and around the world in connection with the spread of COVID-19 requires consideration.

**Analysis of recent research and publications.** In the fundamental work

[1] it is emphasized that 'the risks of emergencies of a different nature' significantly affect the quality of life in any state. This certainly applies to Ukraine. The author of [1] notes that the use of only the 'traditional administrative approach' to responding to emergencies is often ineffective. And that one of the reasons for the low level of security of the population, territories, etc. from emergencies in Ukraine is the weakness of the state policy in this area. The question of whether extraordinary events (emergencies) can or cannot be assessed as force majeure and how effective the mechanisms of state regulation of the insurance market in our country are in emergency situations require special research, in particular, on the examples of the COVID-19 pandemic and mechanisms of state regulation of the insurance market in our country.

It is necessary to agree with the statement in the book [2] of the Academician of the National Academy of Sciences of Ukraine S. V. Komisarenko that concluded that the current and any new pandemic requires the mobilization of all the state resources. In the fight against coronavirus or other deadly disease for mankind will be important not only the level of science and medicine, but also the state of the economy and financial sphere of the state. Including the readiness of the system and mechanisms of state regulation of the insurance market to protect and enhance the safety of the citizens by insuring the risks associated with this disease and its consequences. Therefore, given the current epidemiological situation in Ukraine and the economic situation of the state, the activities of

state regulators of non-banking financial services should, above all, be focused on the following areas: forecasting, timely detection, prevention and neutralization of security threats to the citizens of Ukraine, individuals and legal entities; to increase the stability of these markets; eradicating the practice of using insurance transactions by unscrupulous business structures to evade taxes; to accelerate the integration of the Ukrainian legislation and regulations in the field of non-banking financial services to the conditions of the European Union. We note and emphasize that these recommendations generally apply to difficult periods of the state development. In case of force majeure, the system of the public administration in the financial sector of the economy must respond immediately and radically.

An attempt to systematize the main measures introduced by the public authorities and aimed at preventing the exacerbation of the systemic crisis associated with the emergence and spread of coronavirus disease is made in the article [3]. According to the findings of this work, Ukraine, like other countries, was not ready for such a global challenge. After the outbreak of the pandemic in Ukraine a number of state-wide measures were implemented, aimed at reducing the negative impact of the disease on the economy of the state, on the state of the society. But every field, every industry, not only medicine or healthcare, requires additional non-standard solutions due to the specifics of the industry. Directly in the system of state regulation of non-banking financial services markets it is necessary to introduce such addi-

tional measures that take into account the specifics of the functioning of insurance and other non-banking financial services and can partially offset the negative effects of the pandemic.

The downturn in the economy, due to the spread of coronavirus disease, has led to a decrease in the efficiency of non-banking financial services markets. Most of the structures operating in these markets are even on the verge of ceasing to operate. As a result of the quarantine restrictions imposed in Ukraine, small and medium-sized businesses have encountered difficulties, tourism, air and rail services have significantly decreased, the saturation of passenger flows on local transport has weakened, the transportation of goods has decreased, and so on. A special state has been introduced at strategic facilities (nuclear power plants, etc.).

The coronavirus disease will continue to create difficulties and lead to deterioration in all sectors of the economy. This will be reflected in the performance of the insurance market due to lower production in almost all industries and, as a result, reduced financial resources of the citizens that could be spent on non-banking services, including insurance. Insurance market monitoring showed that in the second half of 2020 the volume of collected insurance premiums decreased by approximately 20 %. There were unexpected, due to coronavirus disease, difficulties in the work of insurance agents, brokers, branches and offices of insurance companies in the regions and more. It is obvious that the state regulators of non-banking financial services markets should use mechanisms and take anti-crisis measures in addition to the solu-

tions proposed in the article [3], which minimize losses from the systemic crisis in these markets.

In the literature sources [4–9] the issues of mechanisms of response of the state bodies of different countries to force majeure in the agricultural sector are considered. The information from these sources is analyzed further in the course of consideration of the topic. It should be noted that the topic of state regulation of the insurance market in force majeure situations needs further research and improvement.

**The purpose of the article** is an in-depth analysis of the mechanisms and measures of state regulation of the insurance market, aimed at protecting the citizens in case of emergencies, and to find ways to improve the insurance system of risks of unforeseen events of force majeure.

**Presentation of the main material.** The system of state regulation of non-banking financial services markets should introduce and implement in practice measures to spread insurance of military-political risks, which have intensified in connection with the coronavirus pandemic. Unfortunately, there are circumstances that contribute to the negative effect of synergy of risks. It is necessary to develop mechanisms for preferential insurance for doctors who come into contact with patients with coronavirus. In particular, the state must provide insurance against illness in the event of infection of a medical worker. The system of state regulation of non-banking financial services markets in general and, in particular, the regulator of the insurance market, must prepare for a possible deterioration not only morally, but

also in accordance with the tasks and responsibilities assigned to these structures.

Of course, the market participants themselves should step up their activity in search of anti-crisis solutions. With regard to the functioning, in particular of the insurance market, it is necessary to support the insurance companies that have offered services to insure the citizens against COVID-19 and the associated possible complications and negative consequences. The regulators of insurance and other markets that provide non-banking services should focus on ensuring the functioning of markets, on the preservation of jobs by their subjects. Self-regulatory organizations uniting insurance market entities, together with non-banking financial market regulators, should develop and propose to the Cabinet of Ministers of Ukraine specific mechanisms for state support of the insurance business, the operation of which is of particular importance at that time. Insurers need support from the public authorities. As measures to stimulate the insurance market can be considered, for example, easing for a certain period of time the requirements for assets and capital of the insurers.

The public authorities must respond to anticipations of possible cataclysms, which sometimes occur in any country. But this topic has not been worked out enough in Ukraine yet. Mechanisms for regulating the markets of non-banking financial services, primarily the insurance market, in crisis situations have not been developed. The question of the legitimacy of considering natural anomalies (droughts, floods, fires, earthquakes, etc.) as force

majeure in various situations is clearly not resolved. There are no methods for assessing force majeure. It is obvious that the mechanisms of the public administration must provide for the prevention of negative consequences in the country, such as drought, floods, other weather disturbances and compensation of victims through the insurance system.

The development of the agricultural insurance in particular can provide compensation for losses of the agricultural producers, caused primarily by droughts in the steppe part of Ukraine. The experience of meteorologists shows that droughts, say in the Odessa region, occur periodically. Therefore, the authorities should introduce such mechanisms of state regulation of the agricultural insurance, which will operate on a permanent basis and save the farmers from bankruptcy in the event of drought or other unexpected deviations of weather conditions from, so to speak, standard norms. And at the same time will be attractive, profitable for the insurers. Agricultural insurance is a separate specific section on the provision of insurance services to the farmers and the state's participation in compensation by insurance companies for losses of the agricultural producers that periodically occur due to natural disasters, including due to abnormal droughts. Related issues are very difficult to solve.

In-depth consideration of the mechanisms of the state's response to any force majeure through insurance is of scientific interest to the approaches used in various countries around the world. According to literature sources [4–9], the main reason for the slow

development of agricultural insurance in Ukraine is the allegedly high cost of insurance services for the Ukrainian farmers, including the size of insurance premiums. Experience, such as the USA, shows that part of the costs of the farmers for insurance, namely the payment of insurance premiums, is borne by the state. Of course, the state incurs certain costs, which are much lower compared to the funds needed to compensate the farmers affected by the drought. Thus, in the USA and most European countries, agricultural insurance is an effective mechanism for the farmers to avoid drought losses or at least partially compensate for its negative effects.

In Ukraine the mechanisms of state support of the farmers in insuring the risks associated with deviations of weather conditions from the forecast have not yet been worked out. One of the reasons for this is the mutual distrust of the farmers in the insurance institution. On the other hand, insurers do not trust farmers, who often distort the situation regarding the causes of loss of all or part of the harvest [4–9, etc.].

The possibility for the farmers to receive assistance from the state is provided by the Law of Ukraine 'On Peculiarities of Insurance of the Agricultural Products with State Support' No. 4391-V of February 9, 2012. According to this Law, a mandatory condition for state support is the availability of a crop insurance policy for a farmer. Most likely, such a requirement is appropriate. According to the data provided in the above articles, the share of agricultural insurance in the total insurance market in 2016 was

0,6 % and gradually increased. Then the development of this area of insurance stopped because in subsequent years for the implementation of the program provided by this law budget funds were not allocated. Only powerful insurance companies could afford agricultural insurance [9]. A small number of insurers, as it is known [10], reduces competition and leads to market monopolization, which in turn reduces the quality of the insurance products. The system of state regulation of the insurance market almost did not take a significant part in solving the problem of compensation for losses incurred by the farmers as a result of natural disturbances.

The Cabinet of Ministers and the Verkhovna Rada of Ukraine understand the urgent need to introduce agricultural insurance on a significant scale for the state in the event of a negative situation caused by an anomaly in weather conditions. And they intend to solve this problem. The new bill should define and economically justify the directions and mechanisms for providing assistance to the farmers through insurance. Various options are offered and analyzed. For example, by way of compensation by the state of ~50 % of insurance premiums farmers will pay to insurance companies. Or state compensation to insurers for part of the insurance indemnity, if the insurance premiums paid to insurance companies by the farmers are insufficient to cover the losses. Each of these significantly different mechanisms of the state participation in agricultural insurance must be carefully substantiated by reliable economic calculations performed by the state regulators of the insurance



market with the involvement of scientists, self-governing organizations of insurers, agribusiness structures and other institutions. Work in this direction is still not enough for unambiguous recommendations.

Based on the results of our research, we recommend dividing the problem into two parts. Namely, on agricultural insurance in the generally accepted approach, which takes into account the constant fluctuations in yields and prices for agricultural products within the normal limits. And to insure the risks of farmers associated with the occurrence of weather disasters, defined as force majeure. That is, force majeure in accordance with Ukrainian law. Let us emphasize that it was the catastrophic droughts, floods, coronavirus pandemic, and fires that occurred in Ukraine in 2019–2020 that once again drew attention to the fact that compensation for losses and support to the affected population should be carried out not only by the state, but also by business through insurance mechanisms.

In Ukraine it is customary to apply reservations in contracts, agreements, etc. of economic content and to provide for the section 'Force Majeure', according to which the parties to the agreement are released from obligations in case of force majeure. According to the encyclopedic definition, force majeure (irresistible force) is an emergency and unavoidable in specific circumstances (e.g., flood, storm, other natural disasters), which usually release from liability for non-performance of the agreement or causing harm to the subject of the agreement. Force majeure, i.e. emergencies and unavoidable circumstances may include not only excep-

tional weather conditions and natural disasters, but also social (public) circumstances (declared and undeclared wars, revolutions, etc.), or government action (embargoes, quotas, etc.). The Law of Ukraine 'On Chambers of Commerce and Industry in Ukraine' of 02.12.1997 No. 671/97-BP stipulates that the Chamber of Commerce and Industry of Ukraine and the regional chambers of commerce and industry authorized by it certify force majeure. Note that the concept of 'force majeure' is not similar to the concept of 'emergency' (E), although often applied to the same events. The concept of 'force majeure' is essentially much broader. In the opinion of the author of the article [1], 'from the point of view of administration such a phenomenon as an E is the cessation of the normal process of life in the affected area'.

We will leave the discussion on whether it is legal or illegal from the legal point of view to qualify the fact of the occurrence and spread of COVID-19 disease as force majeure outside the scope of this article. The main thing that is not in doubt is the need to develop, approve at the legislative level and put into practice through the system of insurance against risks of COVID-19 or infection with other exceptional and previously unknown diseases and possible negative and even catastrophic consequences. On the contrary, it is about insuring the risks of force majeure. That is, it is proposed to change the concept of attitude to force majeure to the opposite of what is now accepted. Or close to the opposite of the relatively common and provided for in the legislation of Ukraine. At the same time, state regulation of these in-

insurance services should be maintained and expanded.

**Conclusions.** It should be agreed with the definition [5] that risk is a combination of probability and consequences of adverse events. It is proposed to expand the use of insurance mechanisms as an additional means of protecting the population from the risks associated with the coronavirus pandemic and other force majeure situations. The society is not able to avoid them, but insurance can mitigate the negative consequences. The body of state regulation of the insurance market (the regulator) should ensure maximum protection of the insurers through licensing of the insurance companies, insurance agents and brokers, through monitoring the level of rates and constant control of their activities. The regulator of the insurance market must determine the principles of construction of insurance programs of risks of force majeure and carry out full administration of such programs.

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